

REMARKS

Reconsideration is requested. Claims 1-7 are pending. Responsive to the Office Action of April 23, 2003, the Examiner's comments and the cited art have been noted and studied. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance, and such action is requested.

The specification has been amended to correct clerical errors.

Independent claim 1 has been amended to clarify the claimed subject matter. In particular, specific characteristics of the air gap and the absorbent layer have been recited (support at, for example, page 5, lines 11-13 and page 6, lines 27-30 of the specification). In addition, claim 1 has been amended to recite that the applying step is such that "the air pressure of the air gap is increased, thereby controlling liquid sample absorption by the absorbent layer" (support at, for example, page 5, lines 15-23 of the specification).

Independent claim 4 has been amended to recite characteristics of the air gap and the absorbent layer (support at, for example, page 5, lines 11-13 and page 6, lines 27-30 of the specification). In addition, independent claim 4 has been amended to recite that the apparatus is adapted "such that application of a liquid sample to the absorbent layer increases the air pressure of the air gap, thereby controlling liquid sample absorption by the absorbent layer" (support at, for example, page 5, lines 15-23 of the specification).

It is respectfully submitted that the amendments above are supported by the specification, claims, abstract of the disclosure, and drawings as originally filed, and that no new matter has been added.

35 U.S.C. §102 Rejections:

The subject matter of claims 1-7 was rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,024,919 to Nelson et al. (hereinafter "Nelson"). Nelson, as understood, describes a test device that includes a means (e.g., a reaction layer) for reacting with a liquid sample, a sintered polymer, and a window (see, for example, col. 2, lines 56-62 of Nelson). The window is described as being present to avoid immobilization of a portion of the sintered

polymer (see col. 2, lines 33-37 and col. 6, lines 45-49 of Nelson) and for a monitor to detect changes in the reaction layer therethrough (see col. 9, lines 58-63 of Nelson).

Independent claims 1 and 4, as amended, each recite an air gap that serves to control liquid sample absorption by an absorbent layer upon application of the liquid sample to that absorbent layer. In addition, amended claims 1 and 4 recite that the air gap is a "chamber." Applicants respectfully submit that Nelson does not describe, teach or suggest the use and adaptation of an air gap as recited in claims 1 and 4. Nelson merely describes a window, which can be a "hole," a "recess" or a "discontinuity" (see, for example, col. 6, lines 45-47 of Nelson).

For at least the foregoing reasons, Applicants submit that independent claims 1 and 4 are novel, not obvious, and allowable over Nelson. Since claims 2-3 and 5-7 depend from and further limit independent claims 1 and 4, respectively, they are allowable for at least the same reasons.

The subject matter of claims 4-7 was rejected under 35 U.S.C. §102(b) as anticipated by EP 0215419 to Blatt et al. (hereinafter "Blatt"). Blatt seems to describe a capillary gap device that includes an overflow chamber, overflow proportioning channel, absorbing material and an air relief port (see, for example, col. 2, line 58 through col. 3, line 4; col. 4, lines 46-56 and col. 6, lines 9-18 of Blatt).

Independent claim 4, as amended, recites an air gap that serves to control liquid sample absorption by an absorbent layer upon application of the liquid sample to that absorbent layer. In addition, amended claim 4 recites that the air-gap is a "chamber." Applicants respectfully submit that ^{Blatt} Nelson does not describe, teach or suggest the use and adaptation of an air gap as recited in amended claim 4. Blatt merely describes an air relief port for venting air (see, for example, claim 1 of Blatt).

For at least the foregoing reasons, Applicants submit that independent claim 4 is novel, not obvious, and allowable over Blatt. Since claims 5-7 depend from and further limit independent claim 4, they are allowable for at least the same reasons.

*intended use!
Blatt teaches
air gap is
chamber!
not end use*

The subject matter of claims 1-3 was rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 5,939,331 to Burd et al. (hereinafter "Burd"). Burd, as understood, describes a device that includes a bottom cover, test strip, window, top cover and a series of slits in the top cover (see col. 8, lines 2-5 and col. 9, lines 46-47 of Burd). The slits provide for evaporation of fluid (see col. 9, lines 46-47 of Burd).

Independent claim 1, as amended, recites an air gap that serves to control liquid sample absorption by an absorbent layer upon application of the liquid sample to that absorbent layer. In addition, amended claims 1 and 4 recite that the air gap is a "chamber." Applicants respectfully submit that Burd does not describe, teach or suggest the use and adaptation of an air gap as recited in amended claim 1. Burd merely describes slits adapted for evaporation of fluid, not an air gap with the beneficial characteristics recited in claim 1. Although the Office Action contends that the top cover prevents the release of air from the slits (see page 4, section 5 of the Office Action), the slits are "in the top cover" and allow for evaporation of fluid" from underlying zone 31 (see col. 9, lines 46-47 of Burd). Applicants, therefore, contend that air is indeed released from the slits described by Burd.

For at least the foregoing reasons, Applicants submit that independent claim 1 is novel, not obvious, and allowable over Burd. Since claims 2-3 depend from and further limit independent claim 1, they are allowable for at least the same reasons.


Serial No. 09/914,684

CONCLUSION

Applicants respectfully requests that, in light of the amendments and explanations above, the Examiner reconsider and withdraw his rejections. Applicants respectfully submit that the claims are in condition for allowance. In the event that minor claim amendments are necessary to meet formal requirements, Applicants invite the Examiner to telephone the undersigned so that issuance can be expedited.

Respectfully submitted,

By: _____

 7/21/02
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